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SUBJECT: OMAN RESPONSE TO SECTION 527 REQUEST

REF: STATE 55422

11. (U) In response to reftel request, Embassy submits one case involving the Omani government that was brought to our attention by a U.S. citizen who works for a Bahraini-based company involved in the dispute.

12. (U) Case summary. The United States Government is aware of one claim against the Government of Oman that has been settled in favor of the claimant on appeal. In 1998, the claimant formed a partnership with Omani interests to construct a hatchery and marine service center. The claimant, which received assurances from the government that it could commence operations, produced its first harvest in 12002. Prior to this first harvest, the government informed the claimant that the company would have to vacate the land. The claimant pursued legal recourse to recover \$54 million in actual investment and 10 years' estimated net profits. It won a decision against the government in January 2006 in the amount of \$500,000. Both parties appealed the decision. The appellate court upheld the initial decision in December 2006. The claimant has found the amount of compensation to be insufficient and is considering pursuing this case further with the government.

13. (SBU) Background. In 1998, the claimant, Bahrain-based DevCorp, in partnership with the Shanfari family (35%), Grand Cayman-based Sea Farms International (25%), Yusuf bin Alawi (10%), and the Dhofar Group (5%), formed Oman International Shrimp Company (OISC) to begin a hatchery and marine service center at the Duqm site. OISC collected its first harvest in July 2002.

14. (SBU) Prior to this harvest, the Ministry of Agriculture and Fisheries notified OISC on October 13, 2001, that they would have to vacate the site in order to construct the Duqm port. On July 21, 2003, the Ministry of Finance issued a decision stating that no other site would be available for OISC to transfer its operations. OISC, in turn, sued the Ministry of Finance in 2003 for damages in the amount of 21 million Omani rials (\$54 million). This amount represents actual investment by the company, as well as an amount of 10 years' loss of net profits, as calculated by KPMG. While acknowledging that it did not have a lease for the land, OISC claimed that it had received assurances from the Ministry that it could develop a shrimp farm on the land, with a land lease to be forthcoming. It retained Trowers and Hamlin as its counsel.

15. (SBU) On January 3, 2006, the Administrative Court found both the Ministry of Finance and the Ministry of Agriculture and Fisheries liable in the amount of 189,971 RO (\$494,000). In the decision, the court upheld the principle of "estoppel," whereby entities are estopped from benefiting from their own breach of promises. OISC claims, however, that the judgment is insufficient, as the amount represents

less than 1% of the damages sought, and only 15% of the actual audited costs of the project.

¶6. (SBU) OISC appealed the case, claiming that it is due 21 million RO. The ministries appealed the case as well, claiming that no compensation should be awarded. The appellate court consolidated all three cases into one, and on December 26, 2006, issued a decision upholding the lower court's ruling. In its decision, the appellate court affirmed the damage estimates calculated by the administrative court-appointed engineering expert, while refuting the claims made by OISC for additional compensation based on (1) the lack of a formal land lease; (2) the fact that some costs incurred were for the purpose of conducting a feasibility study (which all companies have to prepare, whether or not they win the contract); and (3) that the interest claimed by OISC does not have legal merit under Oman's commercial law.

¶7. (SBU) OISC is considering further courses of action, including the possible submittal of a letter to Sultan Qaboos bin Said, Oman's head of state. An OISC representative, who is a U.S. citizen, believes that the Sultan would favor the company's position if he knew of the case.

¶8. (SBU) Comment. The Ambassador discussed this case with Minister of National Economy Ahmed bin Abdul Nabi Macki in July 2006. Macki was closely familiar with the case, and noted that he had tried to reach a settlement with the company before it took his Ministry to court. He pledged then to honor the court's decision when reached, and subsequently the Ministry issued a check to OISC in the amount that was awarded by the appellate court. Of further note is that Yusuf bin Alawi is the Minister Responsible for Foreign Affairs. To our knowledge, he has not been active in the deliberations of this case. End Comment.

GRAPPO